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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,586	12/08/2003	Thomas J. Mackey	DaGOOM-0303	4552

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EXAMINER
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BLAU, STEPHEN LUTHER

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

②

<b>Office Action Summary</b>	<b>Application No.</b> 10/730,586	<b>Applicant(s)</b> MACKEY, THOMAS J.	
	<b>Examiner</b> Stephen L. Blau	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8,33,35,36,133-139,159,161,180 and 184-186 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 133-136 is/are allowed.
- 6) ☒ Claim(s) 7,8,33,35,36,137-139,159,161,180 and 184-186 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Specification***

1. The specification is objected to under 37 CFR 1.71 for not being written in a clear and exact terms as to enable one skilled in the art to make and use the same. It is uncertain how to make a game piece having a rotating wheel integral with a game piece where the indicia on the wheel modifies at least one of the character attributes. The only movable wheel in the specification and drawings is for movement counting and as such each time a game piece is moved the wheel turns. Each time the game piece is moved than the character indicia will always be changing.

***Priority***

2. This application does not meet the conditions of a Continuation of application 10/189,354 in that there is added mater in this application which was not present in application 10/189,354 (i.e. a wheel or sphere including indicia that modifies at least one character attributes (Claims 7, 33, 137 and 180)). As such either the added mater needs to be removed or this application must be changed to a Continuation-in-Part. The only rotating device in the parent cases have been for movement measuring only.

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the wheel or sphere including indicia modifying a character attribute as stated in claims 7, 33, 137 and 180 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 7-8, 33, 35-36, 137-139, 159, 161, 180, and 184-186 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is uncertain how to make a game piece having a rotating wheel integral with a game piece where the indicia on the wheel indicates character, attributes and values. The only movable wheel in the specification and drawings is for movement counting and as such each time a game piece is moved the wheel turns. Each time the game piece is moved than the character indicia will always be changing.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, Matsumoto, Jorma and Breslow.

Baca discloses a method of playing a miniature war game (Title) on a playing surface (Fig. 1) with a plurality of game pieces (Figs. 2-12), selected game pieces are representative of individual characters (Figs. 2-9), steps of simulating combat with a mathematical combat resolution in the form of determining the highest and lowest sum of rolled dice incorporating at least one randomizing element in the form of dice (Col. 8, Lns. 10-25), moving at least some of the game pieces representing the characters on the playing surface (Col. 7, Lns. 27-47), each game piece representing multiple distinct character attribute in the form of their purchasing cost, combat value and type (i.e. ruler, king, soldier, etc...) (Col. 5, Lns. 60-67), a combat characteristic having an attack value in the form of power value utilized in the mathematical combat resolution (Col. 8, Lns. 10-25, Col. 8, Lns. 1-9), and a physical characteristic in the form of value (purchasing value) (Col. 5, Lns. 60-67).

Baca lacks the multiple independent visible indicia indicative of distinct character attributes, indicia being numbers, indicia representing both value of the attribute and associated attribute, a step of measuring movement with a measurement mechanism distinct from the playing surface, an indicia for physical characteristic of character type and a game piece having a rotating wheel integral where the wheel indicates indicia in the form of a number viewed through an aperture that modifies at least one of an(multiple) character attribute(s) that is associated with at least one visible indicia on a game piece, at least one visible indicia on a game piece is

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indicative of a character attribute that is not modified by a wheel indicia, and manually rotating the rotating counting wheel during the play of a game.

Powell discloses the multiple independent visible indicia in the form of numbers indicative of distinct character attributes and values of the attributes in the form of mobility and strength (Col. 4, Lns. 26-51, Figs. 8-14). In view of the patent of Powell it would have been obvious to modify the game of Baca to have multiple independent visible indicia in the form of numbers indicative of distinct character attributes and value of the attributes in order to make it easier for a player to remember the character attributes for each of the game pieces. In view of the patent of Powell it would have been obvious to modify the game of Baca to have additional attributes as a movement value with an independent visible indicia in the form of a number indicative of distinct character attributes or to have different values for cost and combat with different indicia associated with in order to make a game more complex.

Jorma discloses a war game with not squares but a step of measuring movement with a measurement mechanism distinct from the playing surface (Fig. 2) in order to have a boardless game (Col. 1, Lns. 8-14). In view of the reference of Jorma it would have been obvious to modify the game of Baca to have with a step of measuring movement with a measurement mechanism distinct from the playing surface in order to have a boardless game.

Matsumoto discloses a miniature war game with indicia for physical characteristic of character type of movement range in the form of King and Pawns (Col. 3, Lns. 33-67, Fig. 1) and at least one of the character indicia not being associated with a rotating element indicia (Fig. 5, Ref. No. 36). For claims 7 and 137, in view of the patent of Matsumoto it would have been obvious to modify the game of Baca to have an indicia for physical characteristic of character

type in order to reduce cost of manufacturing the game by not having to actually manufacture the form of a character type. Matsumoto discloses a game piece having a rotating wheel integral where the wheel indicates indicia indicative of a character attribute in the form of how many areas a piece may move (Col. 3, Lns. 33-50) and a separate indicia giving meaning to the value (Fig. 1). In view of the patent of Matsumoto it would have been obvious to modify the game of Baca to have an indicia for physical characteristic of character type and a game piece having a rotating wheel integral where the wheel indicates indicia in the form of a number viewed through an aperture that modifies at least one of an(multiple) character attribute(s) that is associated with at least one visible indicia on a game piece and the wheel indicia modifies at least one of movement and range values for a character in order to be able to vary the characteristics for a game piece.

In view of the patent of Powel and Matsumoto it would have been obvious to modify the game of Baca to have a game piece having a rotating wheel integral where the wheel indicates indicia in the form of a number viewed through an aperture that modifies at least one of an(multiple) character attribute(s) that is associated with at least one visible indicia on a game piece, and at least one visible indicia on a game piece is indicative of a character attribute that is not modified by a wheel indicia in order to vary at least one of the characteristics while leaving others the same to add complexity to a game.

Breslow discloses a manually rotating wheel used to determine range and movement values (Fig. 3). In view of the patent of Breslow it would have been obvious to modify the game of Baca to have a manually rotating wheel used to determine range and movement values in order to reduce costs by having an automatic rotating wheel.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, Weisman, and Jorma.

Baca discloses a method of playing a miniature war game (Title) on a playing surface (Fig. 1) with a plurality of game pieces (Figs. 2-12), selected game pieces are representative of individual characters (Figs. 2-9), steps of simulating combat with a mathematical combat resolution in the form of determining the highest and lowest sum of rolled dice incorporating at least one randomizing element in the form of dice (Col. 8, Lns. 10-25), moving at least some of the game pieces representing the characters on the playing surface (Col. 7, Lns. 27-47), each game piece representing multiple distinct character attribute in the form of their purchasing cost, combat value and type (i.e. ruler, king, soldier, etc...) (Col. 5, Lns. 60-67), a combat characteristic having an attack value in the form of power value utilized in the mathematical combat resolution (Col. 8, Lns. 10-25, Col. 8, Lns. 1-9), and a physical characteristic in the form of value (purchasing value) (Col. 5, Lns. 60-67).

Baca lacks the multiple independent visible indicia indicative of distinct character attributes, indicia being numbers, indicia representing both value of the attribute and associated attribute, a step of measuring movement with a measurement mechanism distinct from the playing surface, and an indicia for physical characteristic of character type and a game piece having a rotating wheel integral where the wheel indicates indicia in the form of a number viewed through an aperture that modifies at least one of an(multiple) character attribute(s) that is associated with at least one visible indicia on a game piece, at least one visible indicia on a game piece is indicative of a character attribute that is not modified by a wheel indicia, manually

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rotating the rotating counting wheel during the play of a game, and the wheel indicia modifies at least one of movement and range values for a character.

Powell discloses the multiple independent visible indicia in the form of numbers indicative of distinct character attributes and values of the attributes in the form of mobility and strength (Col. 4, Lns. 26-51, Figs. 8-14). In view of the patent of Powell it would have been obvious to modify the game of Baca to have multiple independent visible indicia in the form of numbers indicative of distinct character attributes and value of the attributes in order to make it easier for a player to remember the character attributes for each of the game pieces. In view of the patent of Powell it would have been obvious to modify the game of Baca to have additional attributes as a movement value with an independent visible indicia in the form of a number indicative of distinct character attributes or to have different values for cost and combat with different indicia associated with in order to make a game more complex.

Jorma discloses a war game with not squares but a step of measuring movement with a measurement mechanism distinct from the playing surface (Fig. 2) in order to have a boardless game (Col. 1, Lns. 8-14). In view of the reference of Jorma it would have been obvious to modify the game of Baca to have with a step of measuring movement with a measurement mechanism distinct from the playing surface in order to have a boardless game.

Weisman discloses a game piece having a rotating wheel integral where the wheel indicates indicia indicative of multiple character attributes [0037], the wheel indicates indicia in the form of a number viewed through an aperture that modifies at least one of an(multiple) character attribute(s) that is associated with at least one visible indicia on a game piece, at least one visible indicia on a game piece is indicative of a character attribute that is not modified by a

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wheel indicia, manually rotating the rotating counting wheel during the play of a game, and the wheel indicia modifies at least one of movement and range values for a character (Fig. 7). In view of the publication of Weisman it would have been obvious to modify the game of Baca to have a game piece having a rotating wheel integral where the wheel indicates indicia in the form of a number viewed through an aperture indicative of an(multiple) character attribute(s), the wheel indicates indicia in the form of a number viewed through an aperture that modifies at least one of an(multiple) character attribute(s) that is associated with at least one visible indicia on a game piece, at least one visible indicia on a game piece is indicative of a character attribute that is not modified by a wheel indicia, manually rotating the rotating counting wheel during the play of a game, and the wheel indicia modifies at least one of movement and range values for a character in order to be able to vary the characteristics for a game piece.

9. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, and Matsumoto.

See paragraphs above for elements of structure previously rejected by Baca in view of Powell and Matsumoto.

10. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, Weisman, and Jorma.

See paragraphs above for elements of structure previously rejected by Baca in view of Powell, Weisman, and Jorma.

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11. Claims 159 and 161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell and Matsumoto as applied to claim 33 above, and further in view of Rhea.

Baca lacks providing a plurality of structural units for forming a variety of simulated structures including a castle positioned on the playing surface and building and placing selected simulated structures on a playing surface.

Rhea discloses a plurality of structural units for forming a variety of simulated structures including a castle positioned on the playing surface (Figs. 1-4) and building and placing selected simulated structures on a playing surface in the form of building a wall by placing structures on the playing surface (Fig. 1). In view of the patent of Rhea it would have been obvious to modify the game of Baca to provide a plurality of structural units for forming a variety of simulated structures including a castle positioned on the playing surface and building and placing selected simulated structures on a playing surface in order to add more atmosphere to the game.

12. Claims 159 and 161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, Weisman, and Jorma as applied to claim 33 above, and further in view of Rhea.

See paragraphs above for elements of structure previously rejected by Baca in view of Powell, Weisman, Jorma and Rhea.

13. Claim 137 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, Jorma, Matsumoto and Rhea.

See paragraphs above for elements of structure previously rejected by Baca in view of Powell, Jorma, Matsumoto and Rhea.

14. Claim 138 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, Jorma, Matsumoto and Rhea as applied to claim 137 above, and further in view of Breslow.

See paragraphs above for elements of structure previously rejected by Baca in view of Breslow.

15. Claims 137-138 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, Jorma, Weisman and Rhea.

See paragraphs above for elements of structure previously rejected by Baca in view of Powell, Jorma, Weisman and Rhea.

16. Claims 180 and 185 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, and Matsumoto.

See paragraphs above for elements of structure previously rejected by Baca in view of Powell, and Matsumoto.

17. Claim 186 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, and Matsumoto as applied to claims 180 and 185 above, and further in view of Breslow.

See paragraphs above for elements of structure previously rejected by Baca in view of Breslow.

18. Claims 180 and 185-186 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baca in view of Powell, and Weisman.

See paragraphs above for elements of structure previously rejected by Baca in view of Powell, and Weisman.

*Allowable Subject Matter*

19. Claims 1-6 and 133-136 are allowed. With respect to claims 1-6, none of the prior art discloses or renders as obvious building a first simulated structure, at least disassembling a first structure, building a second structure, each game piece having multiple independent visible indicia indicative of distinct character attributes in addition to other elements of structure claimed. Whitman discloses a first simulated structure in the form of a fort wall, at least disassembling a first structure in the form of breaching the fort, building a second structure in the form of a second fort with a wall, each game piece having a single visible indicia indicative of a distinct character attribute in the form of type of soldier. Whitman lacks having multiple independent visible indicia indicative of distinct character attributes. With respect to claims 133-136, none of the prior art discloses or renders as obvious each game piece having multiple, independent visible indicia indicative of distinct character attributes, simulated building formed

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of a plurality of structural units, and simulating breaching of at least one simulated structure in at least one of the combat steps in addition to other elements of structure claimed.

***Response to Arguments***

20. The argument that it is improper to object to the specification under 37 CFR 1.71 as not being enabling to one skilled in the art to make or use the same since the counting wheel as a piece is moved is modifying the movement value in the form of counting spaces left out of a maximum is disagreed with. The movement value never changes. It is a fixed indicia [0038] on a game piece as shown in figure 1. The counting only counts movement and does not modify the movement value or any character indicia [0047]. The movement characteristic stays the same throughout the game and is never modified. Throughout the game the counting wheel counts the movement of game pieces. The arguments that objection to the drawings and the priority claims are improper due to the grandparent application 09/479,531 containing a movement measurement device as a wheel or a sphere are disagreed with. The examiner did not object to a movement measuring device being a wheel or a sphere but that a wheel or sphere did not include indicia indicative of a character attributes as referred to in claims 7, 33, 137 and 180 (See paragraphs 4-5, Office Action dated 14 December 2004). The examiner clearly understands the original disclosure to have a movement measurement device being a wheel or a sphere. The examiner could not find in any form in the Grandparent application 09/479,531 a wheel or sphere having indicia indicative of a character attributes as referred to in claims 7, 33, and 180 or as now claimed a wheel includes indicia that modifies at least one of the character attributes that is

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associated with at least one visible indicia of the game piece. As stated above the examiner does not believe the counting wheel is modifying a character attribute. The counting wheel is only measuring. As such the examiner does believe there is a new matter/priority issue for claims 7-8, 33, 35-36, 137-139, 159, 161, 180, and 184-186. The argument that the reference of Weisman is not priority to the effective filing date of any of the claims currently remaining in the application is disagreed with. The elements of structure Weisman was used to reject were not in the Grandparent application and as such are not afforded the earlier filing of the Grandparent application but the date of the filing of this application which is 8 December 2003. Since Weisman was filed 5 October 2001 Weisman is prior art for the new matter entered in this application on 8 December 2003. The argument that it is improper to combine the references of Baca in view of Powell, Matsumoto, and Jorma since it would destroy the objectives and operations of each of the patents is disagreed with. All of these are war games and each have elements which would be obvious to add to the other war games. The argument that the references are improper in that nothing in the combined art suggests a relationship between the indicia on a wheel and the character attribute on the game piece is disagreed with. First claim 7 only requires indicia on a wheel modifying at least one character attribute that is associated with at least one visible indicia on a game piece which Matsumoto teaches. Matsumoto clearly shows this with indicia on a wheel showing movement values which is a character attribute and it is associated with a visible indicia on a game piece in the form of a King or Pawn. The argument that the reference are improper due to not showing an indicia not modified by the wheel indicia and one that is modified is disagreed with. Powell shows that it is know to have more than one character attribute and Matsumoto shows that it is known to have one the character attributes

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modifiable with a wheel. The argument that the rejection is improper due to none of the references teaching or suggesting a claimed relationship between the wheel indicia and the character indicia of the game piece is disagreed with. Powell shows game pieces with multiple character attributes. Clearly there are other ways to disclose this to simplify what is seen by a player as connecting a number value with an none number indicia as shown by Matsumoto. With multiple attributes it would be easier for a player to identify what value is for what attribute. The argument that the applied prior art does not teach a plurality of structural units for forming a variety of simulated structures in combination with remaining claim elements is disagreed with. Rhea clearly shows a plurality of structural units for forming a variety of simulated structures for a war game (Fig. 1).

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

***Conclusion***

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Blau whose telephone number is (571) 272-4406. The examiner is available Monday through Friday from 8 a.m. to 4:30 p.m.. If the examiner is unavailable you can contact his supervisor Greg Vidovich whose telephone number is (571) 272-4415. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858. (TC 3700 Official Fax 703-872-9306)

slb/ 30 April 2005

  
**STEPHEN BLAU**  
**PRIMARY EXAMINER**